PUBLIC PROSECUTOR

v.

ABDULLAH AMBEK

HIGH COURT MALAYA, SEREMBAN
MUSTAPHA HUSSAIN J
[CRIMINAL APPEAL NO. 38 OF 1984]
9 APRIL 1987

CRIMINAL LAW AND PROCEDURE: *Appeal against acquittal and discharge of respondent - For offence under s. 4(c) of Prevention of Corruption Act 1961 - For knowingly using a sick certificate containing false statement - Meaning of the word "examined".*

This was an appeal by the Public Prosecutor against an order of acquittal and discharge by the learned Sessions Court President. The respondent was charged under s. 4(c) of the Prevention of Corruption Act 1961 for knowingly using a sick certificate containing false statements. The doctor issued the certificate without physical examination of the patient and through a third person.

At the close of prosecution's case the learned President held that the prosecution had failed to establish a *prima facie* case against the respondent and acquitted and discharged the respondent without his defence being called.

Held:

[1] The word "examined" means physical and personal examination and therefore the doctor had failed to examine the patient and the respondent should have been called to enter his defence.

[2] Appeal allowed and the respondent to present himself before the Sessions Court Seremban on 13 April 1987.

Case referred to:
Mac Donald v. Cassidy [1959] SLT 106

Legislation referred to:
Prevention of Corruption Act 1961, s. 4(c)

For the public prosecutor - Mohd. Zaki bin Md. Yasin, DPP
For the respondent - James Leslie Ponniah; M/s. Stanley Ponniah, Ng & Soo

JUDGMENT

Mustapha Hussain J:

Decision on the appeal by the Public Prosecutor against the acquittal and discharge of the respondent without his defence being called.

The respondent was charged before the Sessions Court, Seremban, for knowingly using a sick certificate containing false statement therein, under s. 4(c) of the Prevention of Corruption Act 1961. The charge against the respondent read as follows:

> That you on 7 April 1982 between 8.00 a.m. and 8.30 a.m at Sekolah Kebangsaan Pasir Besar, in the District of Gemas, in the State of Negeri Sembilan, being an agent of the Government to wit a teacher attached to the said school, knowingly used a document in respect of which your principal was interested to wit sick certificate No. 391681 dated 5 April 1982 and which contained statements which were false to wit "I hereby certify that I have examined

Mr. Abdullah Ambek of Education Department and find that he/she will be unfit for the proper performance of his/her duties for 5 & 6 April 1982 (two) days (not exceeding ten, including Sundays and holidays)", when in fact you were not examined, and which to your knowledge was intended to mislead your principal one Kamaruddin b. Sulaiman, the Headmaster of the said school and that you have thereby committed an offence punishable under s. 4(c) of the Prevention of Corruption Act, 1961 (Revised 1971).

The medical officer who issued the sick certificate had stated "I hereby certify that I have examined Mr. Abdullah Ambek of Education Department and find that he will be unfit for proper performance of his duty for 5 & 6 April 1982 (two) days." The medical officer Dr. Hezan Nasrullah Lubis (PW4), who issued the said sick certificate had given evidence before the learned President of the Sessions Court, Seremban, when he said he saw one Md. Isa on 6 April 1982. This Md. Isa told the doctor that his two friends were sick at his house. The doctor was at the Batu clinic in Kuala Lumpur while Md. Isa, a Malayan railway leading hand was staying in Jalan Strachan, Kuala Lumpur. Md. Isa had asked for medicine for his two sick friends. This, the good doctor did prescribe and the good doctor also issued the sick certificates. One of the two sick certificates so issued was in respect of the respondent here Abdullah bin Ambek. The good doctor said he did not see the respondent on 6 April 1982 and he believed the symptoms which the respondent's friend Md. Isa had related to him and he prescribed the medicine.

Dr. Hezan said further that "examined" does not mean physical examination and he could examine a patient through a third person, though normally this is not done.

At the close of the case for the prosecution, the learned President, who has since left Government service, held that the prosecution had failed to establish a *prima facie* case against the respondent and accordingly acquitted and discharged the respondent without his defence being called. The Public Prosecutor has now appealed against that decision of the learned ex-President of the Sessions Court.

In his grounds of judgment, the learned ex-President correctly stated that the gravamen of the charge turns essentially on the word "examined". The learned ex-President thought that without qualification the word "examined" is ambiguous. And up to now that term had not acquired either a specialised or a technical meaning. This was the argument that was advanced and rejected by the Scottish High Court of Justiciary in *MacDonald v. Cassidy* [1959] SLT 106.

With respect to the learned ex-President, when a doctor examines a patient, at least for the first time, the doctor has to see the patient. He has to examine the patient physically even though such examination may be by touching the patient with a pencil.

In the case of *MacDonald v. Cassidy*, it was held that "**examined**" by a doctor means that the patient had been seen and his condition investigated so far as the physical circumstances permitted.

I therefore rule that the word **"examined" means physical and personal examination.** The pulse of the patient has to be taken. The patient's eyes, tongue and throat examined and temperature taken. Stethoscope has to be placed on the chest to examine the patient's heart and respiratory conditions. As such the particulars in the said sick certificate complained of do indeed contain particulars which are false. It would be allright if the doctor had been treating the patient in the past and he was well versed and well acquainted personally with the patient's medical history and physical conditions. As such the particulars in the said sick certificate complained of do indeed contain particulars which are false. It would be allright if the doctor had been treating the patient in the past.

The appeal by the Public Prosecutor is allowed. The order of acquittal and discharge of the respondent made by the learned President of the Sessions Court, Seremban is set aside. As the learned President who had acquitted and discharged the respondent is no more in service, I order that the case be tried *de novo* before the President of the Sessions Court. The respondent is ordered to present himself before the Sessions Court, Seremban, on Monday 13 April 1987.

Also found at [1987] 2 CLJ 175